

1 Martin D. Gross [SBN 147426]
email: Martin@lawgross.com
2 **LAW OFFICES OF MARTIN D. GROSS**
2001 Wilshire Boulevard, Suite 205
3 Santa Monica, CA 90403
Telephone: (310) 453-8320
4 Facsimile: (310) 861-1359
5 Attorneys for Plaintiffs
MARGARET KEIPER and DAIL
6 **KEIPER, JR., Individually and as the**
7 **Successors-in-Interest to DAIL**
8 **KEIPER, SR., Deceased**

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
10

11 MARGARET KEIPER, ET AL.
12 MICHAEL CHESTNUT, ET AL.
JESUS AGUILAR, ET AL.

13 Plaintiffs,

14 v.

15 VICTOR VALLEY TRANSIT
AUTHORITY, a Governmental entity;
16 DINORAH AGUILAR; TRANSDEV
SERVICES, INC., A Maryland
17 Corporation; VEOLIA
TRANSPORTATION SERVICES,
18 INC., A Corporation; STEVEN KILTY;
FBN TRANSPORTATION, LLC, a
19 Wisconsin Limited Liability Company;
MARDAN TRANSPORTATION LLC,
20 a Wisconsin Limited Liability
Company; AMSTON SUPPLY, INC., a
21 Wisconsin Corporation;, and DOES 1
22 through 100, inclusive,

23 Defendants.

24 **AND ALL RELATED ACTIONS**
25
26
27
28

Case No. EDCV 15-00703-BRO SPx);
EDCV 15-00762-BRO SPx);
EDCV 15-01481-BRO (SPx)

JOINT RULE 26(f) SCHEDULING
CONFERENCE REPORT

Judge: Hon. Beverly Reid O'Connell
Date: (No date assigned)
Time: 1:30 p.m.
Crtrm.: 14

Trial Date: None

Pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 26-1 and this Court's October 16, 2015, Order Setting Scheduling Conference (the "Order"), a teleconference was held on October 27, 2015, by and between Martin D. Gross for Plaintiffs Margaret Keiper and Dail Keiper, Jr.; Kevin Elder for Jesus Aguilar, Naiomi Bridgette, Jermaine Ratliff; Douglas Welebir for Michael Chestnut, Misiona Tusieseina, Pedro Miranda; for Defendants: Marisa Rodriguez-Shapoval for Defendants Victor Valley Transit Authority, Dinorah Aguilar, Transdev Services, Inc., and Veolia Transportation Services, Inc.; Daniel E. Kenney for Defendant; Connie Benson for Defendants FBN Transportation, LLC, Steven Kilty, and Mardan Transportation, LLC; Amston Supply, Inc. and Glen F. Dorgan for Defendant United States America.

During the meeting of counsel the Parties discussed the nature and basis of their respective claims and a discovery plan. The Parties have exchanged their initial disclosures, and submit this Joint Report.

A. STATEMENT OF THE CASE

On June 2, 2014 a bus traveling toward Fort Irwin collided with a parked tractor-trailer rig. The bus was owned by Defendant Victor Valley Transit Authority (VVTA). The bus driver, Defendant Dinorah Aguilar (Dinorah A.) was an employee of Defendant Transdev Services, Inc. (Transdev) and/or Defendant Veolia Transportation Services, Inc. (Veolia) who were under contract with Defendant VVTA for the operation, maintenance, and service of the public transportation provided by VVTA. Collectively referred to as "Bus Defendants".

The incident occurred on Fort Irwin Truck By-Pass Road which runs adjacent to Fort Irwin Road just outside of the Fort Irwin National Training Center gate, Fort Irwin, County of San Bernardino, State of California. The "Fort Irwin Truck By-Pass Road" is a two lane northbound only road leading to Fort Irwin and just outside Fort Irwin's main gate. Defendant Steven Kilty (Kilty) who was operating under the motor carrier authority of Defendant FBN Transportation, LLC (FBN) had brought

1 his tractor-trailer rig to a stop in the number two lane of the Fort Irwin Truck By-
2 Pass Road as directed by the Department of Army or its designated representative.
3 The tractor was owned by Defendant Mardan Transporation, LLC (Mardan) and the
4 trailer was owned by Defendant Amston Supply, Inc. (Amston). Collectively
5 referred to as "Tractor-Trailer Defendants".

6 Plaintiffs, passengers on the bus, filed Complaints for personal injury against
7 the Bus Defendants, as well as the Tractor-Trailer Defendants. Three lawsuits were
8 filed and consolidated through stipulation and a Court order of October 16, 2015.

9 The Bus Defendants filed a cross-claim for equitably indemnity and
10 contribution against the Tractor-Trailer Defendants, as well as a third party
11 complaint against the United States of America (Department of Army, et al.). Some
12 of the Tractor-Trailer Defendants have filed a cross-claim against the Bus
13 Defendants for indemnification and contribution. The Tractor-Trailer Defendants
14 have filed a third party complaint against the United States of America (Department
15 of Army, et al.).

16 **B. SUBJECT MATTER JURISDICTION**

17 Plaintiffs contend that this Court has subject matter jurisdiction only because
18 the Bus Defendants have filed a third party complaint against the United States of
19 America (USA). This Third Party Complaint is the basis for the removal of this
20 matter to Federal Court. Plaintiffs contend that the Truck By-Pass Road was
21 constructed pursuant to a policy created by the Department of Army for use by
22 public transportation buses and tractor-trailer rigs visiting Fort Irwin. Plaintiffs
23 further contend that Defendant USA has an immunity pursuant to the discretionary
24 function exception of the Federal Tort Claims Act. Plaintiffs anticipate Defendant
25 USA will file a Rule 12(b)(1) motion for dismissal arguing that under the
26 discretionary function exception they are immune from any and all liability.¹

27 ¹ Defendant USA has not yet appeared in this matter.
28

1 Plaintiffs contend that once this motion is filed and heard, subject matter jurisdiction
2 will be lost and this matter will be remanded to State Court.

3 Defendants dispute Plaintiffs' contentions above and assert that subject matter
4 jurisdiction is proper pursuant to 28 U.S.C. Section 1331 (Federal question).
5 Defendants also claim that jurisdiction exists under the Federal Enclave Doctrine.
6 Defendants also wish to learn the identity and contact information of any contractors
7 hired by the USA which may have been involved in the accident or the activities
8 shortly before the accident, including any security contractors which may administer
9 security at and beyond the gate to the fort. If such contractors exist, Defendants
10 contend that they are not covered by any applicable exception to FTCA immunity.

11 **C. LEGAL ISSUES**

12 Plaintiffs assert the key legal issues raised in this case include:

13 1. Subject Matter Jurisdiction once a Rule 12(b)(1) motion is filed by
14 Defendant USA on Bus Defendants' third party complaint;

15 2. Motions for remand to State Court;

16 3. Liability as between Bus Defendants, Tractor-Trailer Defendants, and
17 Defendant USA. The Traffic Collision Report and investigation performed by both
18 the Department of Army and California Highway Patrol have not yet been
19 concluded and/or released. Essential and necessary information is contained within
20 these reports including: (1) Identity of all bus passengers/witnesses; (2) videotapes
21 of the accident from cameras located in the bus, (3) the ECM (Black box) data has
22 not been released; and (4) various information concerning US Army procedures for
23 truck and bus entry to Fort Irwin.

24 4. Defendants Mardan and Amston are likely to present motions based on
25 the Graves Amendment, as they contend they only owned or leased the tractor-
26 trailer rig at issue.

27 The United States Army and/or the California Highway Patrol have
28 reportedly initiated a criminal investigation arising out of the alleged actions and/or
inactions of Defendants Dinorah A. and Kilty. The status of the purported criminal

1 investigation is unknown.

2 Plaintiffs contend that, at this time, it is undetermined whether and to what
3 extent the criminal investigation will interfere with civil discovery issues due to
4 potential assertions of the Fifth Amendment Privilege against self-incrimination.

5 Defendants dispute Plaintiffs' contention and assert that the presently
6 unresolved criminal investigation will interfere with civil discovery issues due to the
7 investigating agencies withholding of the essential and necessary information
8 identified in Section C:3 above. Defendants further assert that the presently
9 unresolved criminal investigation will interfere with civil discovery issues due to
10 Defendants Dinorah A. and Kilty's anticipated assertion of the Fifth Amendment
Privilege against self-incrimination.

11 **D. PARTIES**

12 Keiper Plaintiffs: Margaret Keiper and Dail Keiper, Jr. ("Plaintiffs"),
13 individually and as the Successors-in-Interest to Dail Keiper, Sr., Deceased.

14 Chestnut Plaintiffs: Michael Chestnut, Misiona Tusieseina, Pedro Miranda

15 Aguilar Plaintiffs: Jesus Aguilar, age 33, Naiomi Bridgette, age 28, and her
16 son, Jermaine Ratliff.

17 Bus Defendants: Victor Valley Transit Authority ("Victor Valley"), Dinorah
18 Aguilar ("Aguilar"), Transdev Services, Inc. ("Transdev"), Veolia Transportation
19 Services, Inc. ("Veolia").

20 Tractor-Trailer Defendants: Steven Kilty ("Kilty"), FBN Transportation, LLC
21 ("FBN"), Mardan Transportation LLC ("Mardan"), and Amston Supply, Inc.
22 ("Amston").

23 Third-Party Defendant: The United States of America ("USA").

24 **E. DAMAGES**

25 Dail Keiper, Sr. was killed as a result of said accident. The full extent of
26 damages as to Plaintiffs Margaret Keiper and Dail Keiper, Jr., is still undetermined.

27 Plaintiff Jesus Aguilar lost his right upper extremity. Plaintiff Naiomi
28

1 Bridgette suffered from broken bones requiring the placement of a metal rod.
2 Plaintiff Jermaine Ratliff suffered from what appears to be soft tissue injuries, the
3 nature and extent of which are unknown at this time.

4 Plaintiffs Michael Chestnut, Misiona Tusieseina, Pedro Miranda:

5 Chestnut :

6 Facial Lacerations and abrasions and residual scarring.

7 Emotional distress.

8 Tusieseina:

9 Fractures of L1 & L2 – transverse process (minimally displaced)

10 Rib fracture: left 12th

11 Contusion lower back

12 Hematoma over coccyx (from L-4 to S-4)

13 Hematoma left buttock with tear above perineum area

14 Severe low and mid-back pain.

15 Pain left wrist

16 Miranda:

17 Intrapelvic protrusion of acetabulum Pelvic/Hip/Femur

18 Open reduction internal fixation of left acetabular fracture

19 Fracture dislocation of left Pelvis

20 Shattered left acetabulum (through the left acetabulum and superior left pubic ramus
21 with associated medial migration of the femoral head; together with fractures of
22 both the anterior and posterior columns; displacement of comminuted fracture
23 fragments;

24 impaction fracture of the left femoral head; fracture fragments in the left
25 hip joint) with associated hematoma and retroperitoneal

26 hemorrhage (pelvic hematoma with mass effect on urinary bladder);

27 Injury to left internal iliac artery.

28 Laceration of muscle, fascia, tendon of post muscle group at thigh level

1 Surgical removal of deep buried wire debris from left femur

2 Irrigations and debridement of left thigh down to fascia

3 Ongoing abnormalities of Pelvis and Hips; Pain in hip; reduce Range of Motion.

4 Bus Defendants sustained property damage and have incurred expenses, costs
5 of suit, legal fees and other damages as a result of the alleged actions/inactions of
6 the Tractor-Trailer Defendants and Third-Party Defendant USA.

7 **F. INSURANCE**

8 There is insurance under the Defendants' automobile/truck policies of
9 insurance.

10 **G. MOTIONS**

11 Defendants Mardan and Amston anticipate filing under the so called "Graves
12 Amendment" pursuant to 49 U.S.C. § 30106(a).

13 **H. MANUAL FOR COMPLEX LITIGATION**

14 The Parties do not view this matter as complex and the Manual for Complex
15 Litigation (current edition) should not be required or utilized to facilitate the
16 management of this case.

17 **I. STATUS OF DISCOVERY**

18 The Parties have not yet engaged in discovery. The Parties will commence
19 discovery following the Rule 26(f) Conference. Discovery is needed on liability,
20 causation and the extent of Plaintiffs' damages.

21 **J. DISCOVERY PLAN**

22 The Parties agree to the timing, form, and other requirements for disclosures
23 under Rule 26(a). Discovery will be needed on the incident and investigation of the
24 accident which occurred on June 2, 2014, as well as Decedent's injuries and
25 damages and Plaintiffs' damages. Depositions of all incidental parties will be held
26 prior to the discovery cut-off date provided by the Court.

27 The Bus Defendants do not object to the dates suggested by Plaintiffs for
28 discovery cut-off, expert disclosure and motion filing dates provided that the

1 materials set forth above in Section C:3 are obtained on or before December 4,
 2 2015. In the event that the investigative materials set forth above in Section C:3
 3 cannot be obtained by December 4, 2015, the Bus Defendants anticipate moving for
 4 a temporary stay of discovery.

5 The Tractor-Trailer Defendants believe that, in the absence of the
 6 investigative materials set forth above in Section C:3 the suggested dates for
 7 discovery cut-off, expert disclosure and motion filing dates is premature.

8 **I. Discovery Phases**

9 The Parties do not propose that discovery should be conducted in phases.

10 **II. Electronically Stored Information**

11 The Parties do not anticipate issues relating to the disclosure or discovery of
 12 electronically stored information at this time. The Parties will work to agree on
 13 specifications regarding the production of electronically stored information, and do
 14 not propose any changes in the limitations on discovery.

15 **III. Protective Order and Privilege Logs**

16 The Parties do not anticipate issues regarding claims of privilege or protection
 17 as trial-preparation materials. Nor do the Parties anticipate any issues concerning the
 18 preservation and/or protection of discoverable information or other potentially
 19 relevant evidence.

20 **IV. Adherence to Discovery Rules**

21 The Parties agree that the limitations on discovery imposed by both the
 22 Federal rules of Civil Procedure of the Local Rules of the Central District of
 23 California should apply and no other limitations are necessary at this time.

24 **K. DISCOVERY CUT-OFF**

25 Plaintiffs contend that April 11, 2016 as consistent with the *Keiper* matter
 26 should be implemented by this Court.

27 Subject to the exceptions noted in Section J above, the Bus Defendants agree
 28 that April 11, 2016, as consistent with the *Keiper* matter, should be the discovery

1 cut-off date.

2 The Tractor-Trailer Defendants believe that, in the absence of the
3 investigative materials set forth above in Section C:3 the suggested dates for
4 discovery cut-off, expert disclosure and motion filing dates is premature.

5 **L. EXPERT DISCOVERY**

6 Plaintiffs contend that January 31, 2016 should be the expert disclosure date
7 as consistent with this Court's Order in the *Keiper* matter.

8 Subject to the exceptions noted in Section J above, the Bus Defendants agree
9 that January 31, 2016, as consistent with the *Keiper* matter, should be the discovery
10 cut-off date.

11 The Tractor-Trailer Defendants believe that, in the absence of the
12 investigative materials set forth above in Section C:3 the suggested dates for
13 discovery cut-off, expert disclosure and motion filing dates is premature.

14 **M. DISPOSITIVE MOTIONS**

15 It is anticipated that on Bus Defendants' third party complaint against the
16 USA, that a Rule 12(b)(1) motion will be filed based upon Federal jurisdiction
17 asserting the discretionary function exception as an immunity. Plaintiffs do not
18 anticipate filing any dispositive motions.

19 As indicated previously, it is anticipated that Defendants Tractor-Trailer rig
20 will file a motion based upon the Graves Act. Plaintiffs and Bus Defendants
21 propose that any and all dispositive motions be filed by no later than January 31,
22 2016. The Tractor-Trailer Defendants believe that, in the absence of the
23 investigative materials set forth above in Section C:3 the suggested dates for
24 discovery cut-off, expert disclosure and motion filing dates is premature.

25 **N. ALTERNATIVE DISPUTE RESOLUTION (ADR)**

26 The parties have not held settlement discussions up to this point. The
27 Plaintiffs would be amenable to select Troy Roe as a private mediator. The Bus
28

1 Defendants desire to select a different private mediator and will propose a list of
2 alternative candidates on or before December 31, 2015.

3 Subject to the exceptions noted in Section J above, the Bus Defendants
4 request that the deadline for participating in ADR be set for April 25, 2016.

5 Tractor Trailer Defendants believe that mediation will be meaningless unless
6 the statute of limitations has expired and/or all potential claimants have filed suit.

7 **O. TRIAL ESTIMATE**

8 The Plaintiffs estimate the trial will last 12 days if the trials are consolidated.
9 Individual plaintiff cases are estimated to be 5 days.- The Bus Defendants anticipate
10 the trial will last 12-15 days if the trials are consolidated.

11 **P. TRIAL COUNSEL**

12 Martin D. Gross, as Lead Counsel for Keiper Plaintiffs;

13 Kevin Elder as Lead Counsel for Jesus Aguilar;

14 Robert Brannen as lead counsel for Plaintiffs Naomi Bridgett and Jermaine
15 Ratliff:

16 Douglas Welebir as Lead Counsel for Plaintiffs Michael Chestnut, Misiona
17 Tusieseina, Pedro Miranda:

18 D. Lee Roberts, Jr. (*pro hac pending*) as Lead Counsel for Defendants
19 Transdev, Veolia, VVTA and Dinorah Aguilar.

20 John "Jack" Williamson as lead counsel for Defendants Steven Kilty, FBN
21 Transportation, LLC:

22 Dan Kenney for Defendant Amston;

23 Glen F. Dorgan for Defendant United States America.

24 **Q. INDEPENDENT EXPERT OR MASTER:**

25 The parties do not request the appointment of any independent expert or
26 master.

27 **R. TIMETABLE**

28 See attached form.

S. OTHER ISSUES:

1 The parties have not identified any other issues requiring the Court's attention
2 at this time.

3
4
5 DATED: October 28, 2015

Respectfully submitted,

6 **LAW OFFICES OF MARTIN D. GROSS**

7
8 By: /s/ Martin D. Gross

9 Martin D. Gross
10 Attorney for Plaintiffs
11 MARGARET KEIPER and DAIL
12 KEIPER, JR., Individually and as the
13 Successors-in-Interest to Dail Keiper, Sr.,
Deceased

14 DATED: October 28, 2015

PENNEY AND ASSOCIATES

15
16 By: /s/ Kevin Elder

17 Kevin Elder
18 Attorney for Plaintiffs Jesus Aguilar,
19 Naomi Bridgett and Jermaine Ratliff

20 DATED: October 28, 2015

WELEBIR TIERNEY & WECK

21
22 By: /s/ Douglas Welebir

23 Douglas Welebir
24 Attorney for Plaintiffs Michael Chestnut,
25 Misiona Tusieseina, Pedro Miranda
26
27
28

1 DATED: October 28, 2015

**WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC.**

2
3
4 By: /s/ Marisa Rodriguez-Shapoval

5 Marisa Rodriguez-Shapoval
6 Attorneys for Defendants
7 VICTOR VALLEY TRANSIT
8 AUTHORITY, DINORAH AGUILAR,
9 TRANSDEV SERVICES, INC., VEOLIA
10 TRANSPORTATION SERVICES, INC.

11 DATED: October 28, 2015

**HARRINGTON, FOXX, DUBROW &
CANTER, LLP**

12 By: _____

13 Edward R. Leonard
14 Daniel E. Kenney
15 Attorneys for Defendant
16 AMSTON SUPPLY, INC.

17 DATED: October 28, 2015

WILLIAMSON LAW GROUP

18 By: /s/ John Williamson

19 John S. Williamson
20 Attorneys for Defendants and Cross-
21 Claimants,
22 STEVEN KILTY and FBN
23 TRANSPORTATION, LLC
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 2001 Wilshire Boulevard, Suite 205, Santa Monica, CA 90403.

On October 28, 2015, I served the original of the following document(s) described as **JOINT RULE 26(f) SCHEDULING CONFERENCE REPORT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 28, 2015, at Santa Monica, California.

M/s/ Martin D. Gross
Martin D. Gross

EXHIBIT A**SCHEDULE OF PRETRIAL AND TRIAL DATES**

Case Name: MARGARET KEIPER, et al., v. VICTOR VALLEY TRANSIT
AUTHORITY, et al

Case No.: 5:15-cv-00703-BRO-SP

Matter	Time	Weeks Before Trial	Plaintiff(s) Request	Defendant(s) Request	Court Order
Trial (Jury: X) Estimated length: 15 days	8:30 am		June 28, 2016	June 28, 2016	
[Jury trial] Hearing on Motions in Limine		-1	June 20, 2016	June 20, 2016	
[Court trial] File Findings of Fact and Conclusions of Law; Hearing on Motions in Limine		-1			
Hearing on Disputed Jury Instructions	1:30 pm	-2	June 13, 2016	June 13, 2016	
Pretrial Conference; Proposed Voir Dire Qs Lodged and Agreed-to Statement of Case	3:00 pm	-5	May 23, 2016	May 23, 2016	
Motions in Limine to be filed;		-6	May 16, 2016	May 16, 2016	

Matter	Time	Weeks Before Trial	Plaintiff(s) Request	Defendant(s) Request	Court Order
Lodge Pretrial Conf. Order; File Memo of Contentions of Fact and Law; Exhibit & Witness Lists; File Status Report re Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.		-7	May 9, 2016	May 9, 2016	
Last date to conduct Settlement Conference		-9	April 25, 2016	April 25, 2016	
Last day for hearing motions	1:30 pm	-10	May 2, 2016	May 2, 2016	
Discovery cut-off [Note: Expert disclosure no later than 70 days prior to this date.]		-11	April 11, 2016	April 11, 2016	
Last Day to Amend Pleadings or Add Parties					

SERVICE LIST

Marisa Rodriguez-Shapoval
mrodriguez-shapoval@wwhgd.com
**WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC**
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants
VICTOR VALLEY TRANSIT
AUTHORITY, TRANSDEV
SERVICES, INC., VEOLIA
TRANSPORTATION SERVICES,
INC., DINORAH AGUILAR

John S. Williamson
jwilliamson@williamsonlawgroup.net
WILLIAMSON LAW GROUP
Xerox Centre
11851 East 1st St., Suite 1225
Santa Ana, CA 92705
Telephone: (657) 229-7400
Facsimile: (657) 229-7444

*Attorneys for Defendants and
Cross-Claimants,*
STEVEN KILTY; FBN
TRANSPORTATION, LLC

Edward R. Leonard
elconard@hfdclaw.com
Daniel E. Kenney
dkenney@hfdclaw.com
**HARRINGTON, FOXX, DUBROW &
CANTER, LLP**
1055 West Seventh Street, 29th Floor
Los Angeles, CA 90017
Telephone: (213) 489-3222
Facsimile: (213) 623-7929

Attorneys for Defendant
AMSTON SUPPLY, INC.